

EXHIBIT B

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

05 Cr. 1036 CM GAY

5 DANIEL E. MARINO,

6 Defendant.

8 September 29, 2005
9 11:00 a.m.
White Plains, N.Y.

10 Before:

11 HON. GEORGE A. YANTHIS,

12 Magistrate Judge

13 APPEARANCES

14 MICHAEL J. GARCIA

15 United States Attorney for the
Southern District of New York

16 MARGERY B. FEINZIG

PERRY CARBONE

Assistant United States Attorneys

17 ANDREW B. BOWMAN

18 Attorney for Defendant

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1 THE COURTROOM DEPUTY: United States v. Daniel Marino.

2 MS FEINZIG: Margery Feinzig for the United States.

3 With me is Perry Carbone.

4 MR. BOWMAN: Andrew Bowman for Mr. Marino.

5 THE COURT: Good morning. We're here for the waiver
6 of indictment, the filing of an information, and the entry of a
7 plea. Ms Hilbert, please swear the defendant.

8 (Defendant sworn)

9 THE COURT: Mr. Marino.

10 BY THE COURT:

11 Q. Mr. Marino, you are now under oath and you are sworn to
12 tell the truth. If you knowingly make a false statement, you
13 could be charged with perjury or making a false statement. Do
14 you understand that?

15 A. Yes.

16 Q. What is your full name, please?

17 A. Daniel E. Marino.

18 Q. How old are you?

19 A. 46.

20 Q. How far did you go in school?

21 A. I have a BA in accounting from college.

22 Q. Do you read, write, speak and understand the English
23 language?

24 A. Yes.

25 Q. Are you presently under the care of any doctor or

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1 psychiatrist?

2 A. Yes.

3 Q. Are you able to understand the proceedings here today all
4 right?

5 A. Yes.

6 Q. Is it a doctor or psychiatrist?

7 A. I'm sorry.

8 Q. Whose care are you under, doctor or psychiatrist?

9 A. Both.

10 MR. BOWMAN: It's both a psychiatrist and MD
11 physician.

12 Q. Have you ever been hospitalized or treated for alcoholism
13 or narcotics addiction?

14 A. No.

15 Q. Are you currently under the influence of any drugs,
16 alcohol, medicine or pills?

17 A. No.

18 Q. Do you suffer from any other physical or mental problem
19 which prevents you from understanding the proceeding?

20 A. No.

21 Q. You do have the absolute right to be represented by an
22 attorney at this and every stage of the proceeding against you.
23 If you cannot afford an attorney, the Court would appoint you
24 one. And the right to an attorney goes to every stage of the
25 criminal proceeding, including trial and appeal. Do you

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1 understand that?

2 A. Yes.

3 Q. You have retained Mr. Bowman to represent you in the case?

4 A. Yes.

5 Q. Are you satisfied with the services that he has provided to
6 you so far in the case?

7 A. Yes.

8 THE COURT: There's a waiver of indictment form?

9 THE COURTROOM DEPUTY: Yes, Judge.

10 THE COURT: Please verify the signature of the
11 defendant.

12 BY THE COURTROOM DEPUTY:

13 Q. You are Daniel Marino?

14 A. Yes.

15 Q. This is your original signature, signed today, September
16 29, 2005?

17 A. Yes.

18 Q. Before signing this waiver, have you discussed it with your
19 attorney?

20 A. I'm sorry, can you repeat that.

21 Q. Before signing this waiver of indictment, have you
22 discussed it with your attorney?

23 A. Yes.

24 Q. Have you signed it voluntarily?

25 A. Yes.

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1 Q. Has he explained this waiver of indictment to you?

2 A. Yes.

3 Q. Do you also understand that you are under no obligation to
4 waive indictment?

5 A. Yes.

6 Q. Do you understand if you don't waive indictment and if the
7 government wants to prosecute you, they would have to present
8 your case to a grand jury which may or may not indict you?

9 A. Yes.

10 Q. Do you understand what a grand jury is?

11 A. Yes.

12 Q. Have you seen a copy of this felony information?

13 A. Yes.

14 BY THE COURT:

15 Q. Mr. Marino, unless you waive indictment, you could not be
16 charged with a felony unless a grand jury finds probable cause
17 to believe that a crime has been committed and that you
18 committed it. Do you understand that?

19 A. Yes.

20 Q. A grand jury is composed of at least 16 and not more than
21 23 persons. At least 12 grand jurors must find probable cause
22 to believe that a crime has been committed before you could be
23 indicted. Do you understand that?

24 A. Yes.

25 Q. If you waive indictment, this case will proceed on the

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1 charges in the United States Attorney's information just as
2 though you had been indicted. Do you understand that?

3 A. Yes.

4 Q. Have you discussed waiving your right to indictment by the
5 grand jury with your attorney?

6 A. Yes.

7 Q. Have any threats or promises been made to get you to waive
8 indictment?

9 A. No.

10 Q. Do you wish to waive your right to indictment by the grand
11 jury?

12 A. Yes.

13 THE COURT: The Court finds that the defendant has
14 knowingly and voluntarily waived his right to indictment by the
15 grand jury. The information will be accepted for filing. The
16 Court will enter a not guilty plea at this time and direct the
17 clerk to draw out the name of the assigned district court
18 judge.

19 THE COURTROOM DEPUTY: This is a Wheel A matter,
20 Judge.

21 THE COURT: The case has been assigned to Judge
22 McMahon.

23 Q. I do advise you, Mr. Marino, that you have the absolute
24 right to have this guilty plea proceeding conducted before
25 Judge McMahon who is the district court judge that would be

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1 imposing sentence in your case. Do you understand that?

2 A. Yes.

3 Q. However, if you consent and agree, I will conduct the
4 guilty plea proceeding here today. I will then report and
5 recommend to Judge McMahon as to whether or not the guilty plea
6 should be accepted. I will make that recommendation based on
7 everything that is brought out during the proceeding here
8 today. It is important for you to understand that the Court
9 need not accept your plea of guilty unless it's satisfied that
10 you are guilty and that you understand all your rights. Do you
11 understand that?

12 A. Yes.

13 Q. Is it your wish that I conduct the guilty plea proceeding
14 here today, do you want me to do it?

15 A. Yes.

16 THE COURT: There is a consent form. Ms Hilbert,
17 please verify the signature of the defendant.

18 BY THE COURTROOM DEPUTY:

19 Q. Once again, sir, that is your original signature signed
20 today, September 29, 2005?

21 A. Yes.

22 BY THE COURT:

23 Q. Did anyone threaten you or coerce you or promise you
24 anything to get you to consent to proceed before me?

25 A. No.

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1 Q. Did you sign this consent form freely and voluntarily?

2 A. Yes.

3 THE COURT: The Court finds that the defendant has
4 knowingly and voluntarily consented to proceed before a United
5 States magistrate on this felony plea allocution.

6 There is a plea agreement. Ms Hilbert, please verify
7 the signature of the defendant on the last page.

8 THE COURTROOM DEPUTY: Yes, Judge.

9 BY THE COURTROOM DEPUTY:

10 Q. Mr. Marino, that is your original signature signed today,
11 September 29, 2005?

12 A. Yes.

13 THE COURT: The plea agreement will be marked as
14 Court's Exhibit 1. It will remain in the custody of the United
15 States Attorney.

16 BY THE COURT:

17 Q. Now, Mr. Marino, have you read this plea agreement?

18 A. Yes.

19 Q. Have you gone over it with your attorney?

20 A. Yes.

21 Q. Have you had adequate time to discuss it with your
22 attorney?

23 A. Yes.

24 Q. Do you understand everything that is set forth in the plea
25 agreement?

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1 A. Yes.

2 Q. Did you read the plea agreement before you signed it?

3 A. Yes.

4 Q. Does the plea agreement contain the entire understanding
5 between you and the government in connection with your case?

6 A. Yes.

7 Q. Did you sign this plea agreement freely and voluntarily?

8 A. Yes.

9 Q. Did anyone force you or coerce you or threaten you or
10 promise you anything to get you to sign the plea agreement
11 other than what is set forth in the plea agreement?

12 A. No.

13 Q. Do you understand the charges that are pending against you?

14 A. I'm sorry, can you repeat that.

15 Q. Yes. Do you understand the charges that are pending
16 against you?

17 A. Yes.

18 Q. Have you discussed those charges with your attorney?

19 A. Yes.

20 Q. Do you understand that anything which is not disclosed to
21 me at this time or which is not set forth in the plea agreement
22 will not be binding on the outcome of your case? Everything
23 has to be disclosed, do you understand that?

24 A. Yes.

25 THE COURT: Ms Feinzig, could you advise the defendant

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1 of the maximum possible penalties that he faces on his plea of
2 guilty.

3 MS FEINZIG: Yes. In connection with Count 1,
4 conspiracy to commit investment adviser fraud, mail fraud and
5 wire fraud, the maximum sentence is five years imprisonment, a
6 fine of two hundred and fifty thousand dollars or twice the
7 gross gain or twice the gross loss, three years of supervised
8 release, a maximum restitution of three hundred million
9 dollars, forfeiture, and a hundred dollar special assessment.

10 In connection with Count 2, investment adviser fraud,
11 the maximum sentence is five years imprisonment, three years
12 supervised release, a fine of \$250,000 or twice the gross gain
13 or twice the gross loss, maximum restitution in the amount of
14 three hundred million dollars, forfeiture, and a hundred dollar
15 special assessment.

16 In connection with Count 3, mail fraud, the maximum
17 sentence is 20 years imprisonment, three years supervised
18 release, a fine of \$250,000 or twice the gross gain or twice
19 the gross loss, maximum restitution in the amount of three
20 hundred million dollars, forfeiture, and a hundred dollar
21 special assessment.

22 And the same penalties apply in connection with the
23 fourth count, which is wire fraud.

24 Q. Mr. Marino, did you hear what the assistant United States
25 attorney just said?

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1 A. Yes.

2 Q. Do you understand that those are the maximum possible
3 penalties that you face on your pleas of guilty here today?

4 A. Yes.

5 Q. Do you understand that if you are sentenced to a term of
6 imprisonment, even if it's the maximum term, and to a term of
7 supervised release, and if you violate the terms of supervised
8 release, you could be sentenced to an additional term of
9 imprisonment for violating conditions of supervised release?

10 Do you understand that?

11 A. Yes.

12 Q. Do you understand that if that were to occur, you would not
13 receive credit against the additional sentence for the jail
14 time you already served nor for the time you had served on
15 supervised release? Do you understand that?

16 A. Yes.

17 Q. You are pleading guilty to felony offenses. Such
18 adjudication may deprive you of valuable civil rights, such as
19 the right to vote, the right to hold public office, the right
20 to serve on a jury, the right to possess any type of firearm,
21 the right to possess certain professional licenses, and those
22 are just examples, do you understand that?

23 A. Yes.

24 Q. Are you a United States citizen?

25 A. I'm sorry.

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1 Q. Are you a United States citizen?

2 A. Yes.

3 Q. Do you understand, Mr. Marino, that what I've gone over are
4 the possible consequences of a plea of guilty, these are the
5 things that could happen to you?

6 A. Yes.

7 Q. Now, have you and your attorney talked about how the
8 sentencing guidelines may apply to your case?

9 A. Yes.

10 Q. Do you understand that the Sentencing Guidelines are not
11 mandatory, but they must be considered by the district court
12 judges when imposing sentence in your case? Do you understand?

13 A. Yes.

14 THE COURT: Now, there is also a so-called *Pimentel*
15 letter?

16 MR. BOWMAN: Yes. We just received it.

17 THE COURT: All right.

18 Q. I just want to advise you, Mr. Marino, that the
19 government's estimation of the Sentencing Guidelines are just
20 that, they're estimates in this September 29, 2005 letter,
21 they're not binding on the district court judge. You
22 understand that?

23 A. Yes.

24 Q. Do you understand that the Court will not be able to
25 determine the guideline range for your case until after a

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1 presentence report has been completed, you and the government
2 will have an opportunity to review that report, you could
3 challenge any facts in that report, and you could challenge the
4 report's computation of your sentencing guideline range? Do
5 you understand that?

6 A. Yes.

7 Q. Do you understand that under certain circumstances, both
8 you and the government have the right to appeal any sentence
9 that the Court would impose subject to the terms of the plea
10 agreement? Do you understand that?

11 A. Yes.

12 THE COURT: Ms Feinzig, are there any appeal waiver
13 provisions?

14 MS FEINZIG: No, your Honor.

15 Q. Do you understand that parole has been abolished? If you
16 are sentenced to a term of imprisonment, you will not be
17 eligible for an early release on parole, do you understand?

18 A. Yes.

19 Q. Do you understand that if you disagree with the sentencing
20 guideline determination which is made by the Court, that will
21 not constitute a basis for you to withdraw your plea of guilty?
22 Do you understand that?

23 A. Yes.

24 Q. Do you understand that you do not have to plead guilty in
25 this matter? You have the absolute right to have this matter

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1 tried. If you choose to plead not guilty, you are entitled to
2 a speedy and public trial and your case could be decided by a
3 jury. Do you understand that?

4 A. Yes.

5 Q. Also, if both you and the government agree, your case could
6 be decided by a judge alone without a jury, do you understand?

7 A. Yes.

8 Q. If there was a trial, the presumption of innocence would
9 remain in your favor throughout the entire trial. The
10 government would have the burden at any trial of proving your
11 guilt beyond a reasonable doubt as to each and every element of
12 the crimes charged. And if tried by a jury, the government
13 would have to prove your case to the unanimous satisfaction of
14 each and every member of the jury before you could be found
15 guilty. Do you understand that?

16 A. Yes.

17 Q. If there was a trial, you would have the right, with the
18 assistance of your attorney, to cross-examine and confront the
19 witnesses against you. You would have the right to call
20 witnesses to testify on your behalf. And you would have the
21 right to have subpoenas issued to compel witnesses to give
22 testimony on your behalf. You would also have the right at any
23 trial to testify on your own behalf, but only if you wish; you
24 could not be compelled to testify. And if you chose not to
25 testify, no unfavorable inference would be drawn against you

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1 because of that. Do you understand?

2 A. Yes.

3 Q. If there was a trial, you would be entitled to the
4 assistance of your attorney, and to have an attorney assigned
5 to represent you without cost if you could not afford an
6 attorney. Do you understand that?

7 A. Yes.

8 Q. Do you understand, Mr. Marino, that by pleading guilty to
9 the charges here today, you are giving up your right to a
10 trial, there will not be a trial in this matter?

11 A. Yes.

12 THE COURT: Ms Feinzig, what would the government be
13 prepared to prove if this matter did proceed to trial?

14 MS FEINZIG: Your Honor, the elements of the first
15 charge, conspiracy, are first that two or more persons entered
16 the unlawful agreement charged in the information. Second,
17 that the defendant knowingly and willfully became a member of
18 the conspiracy. Third, that one of the members of the
19 conspiracy knowingly committed at least one of the overt acts
20 charged in the information. And fourth, that the overt acts
21 which you find to have been committed were committed to further
22 some objective of the conspiracy.

23 In connection with the second count, investment
24 adviser fraud, the government would have to establish that the
25 defendant or someone that the defendant aided and abetted was

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1 an investment adviser. Second, that defendant or the person
2 who was aided and abetted had utilized the mails or any
3 instruments of interstate commerce to do one or more of the
4 following things: To employ a device, scheme or artifice to
5 defraud investors; to engage in transactions, practices and
6 courses of business which operated as a fraud and deceit upon
7 clients and prospective clients; and three, engaged in acts,
8 practices and courses of business that were fraudulent,
9 deceptive and manipulative, and that the defendant acted
10 knowingly and willfully.

11 In connection with Counts 3 and 4, mail and wire
12 fraud, the government would have to establish: First, that
13 there was a scheme or artifice to defraud or to obtain money or
14 property by materially false and fraudulent pretenses,
15 representations or promises as alleged in the information;
16 second, that the defendant knowingly and willfully participated
17 in a scheme or artifice to defraud with knowledge of its
18 fraudulent nature and with specific intent to defraud; and
19 third, that in execution of that scheme, the defendant used or
20 caused the use of the mail.

21 MR. BOWMAN: My client has a very bad back problem.
22 Is it all right if he sits during the factual basis?

23 THE COURT: Yes.

24 MR. BOWMAN: In all other respects he's fine. He just
25 injured his back.

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1 THE COURT: That's fine.

2 MS FEINZIG: In connection with the mail fraud count,
3 the third element is that in the execution of the scheme the
4 defendant used or caused the use of the mails as specified in
5 the information. And in connection with the wire fraud scheme,
6 which is charged in Count 4, the third element is that in
7 execution of the scheme, the defendant used or caused the use
8 of the wires as specified in the information.

9 At a trial, in order to establish the elements of all
10 of these crimes, the government would prove based on
11 documentary evidence and testimony of various witnesses, that
12 during the time period set forth in the information, Daniel
13 Marino and his co-conspirators perpetrated a fraud on investors
14 and potential investors of the Bayou Hedge Funds by
15 misrepresenting the value of the Hedge Funds assets and causing
16 these misrepresentations to be disseminated to current and
17 prospective investors in the Southern District of New York and
18 elsewhere. These false and misleading statements and
19 representations, the government would establish, induced new
20 investors to invest in Bayou and lulled existing investors into
21 retaining their investment in Bayou.

22 The evidence would establish that Mr. Marino, who
23 became the chief financial officer of Bayou, and his
24 co-conspirators, caused to be mailed quarterly reports to
25 investors that contained fictitious rates of return on trading

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1 in the funds, and annual financial statements that contained
2 fictitious rates of return on trading and inflated net asset
3 values. Mr. Marino and his co-conspirators also had faxed and
4 emailed weekly newsletters that also misrepresented the
5 performance of the funds at various times during the time
6 period set forth in the information. All of these
7 communications to investors, according to the government's
8 evidence, made it appear that Bayou was earnings profits on
9 trading when in fact it was not.

10 In furtherance of the scheme and because Bayou could
11 not use an actual certified public accounting firm to audit the
12 funds and certify the annual financial statements, Mr. Marino
13 agreed with his co-conspirators to and in early 1999 did form a
14 phony accounting firm, named it Richmond Fairfield Associates,
15 and maintained official space for this fictitious accounting
16 firm in Manhattan. Year after year between 1999 and 2004 the
17 co-conspirators had the false annual financial statements sent
18 out with a fictitious certification by Richmond Fairfield
19 Associates that the fund had been audited and the financial
20 statements were accurate when in fact they were not.

21 The evidence would further establish that in 2004,
22 trading eventually stopped while Mr. Marino's co-conspirators,
23 the chief investment officer and chief executive officer of
24 Bayou, attempted to conduct private placement transactions in
25 Europe and the United States. This use of Bayou funds was not

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1 disclosed to investors. Indeed the communications to
2 investors, the documentary evidence would establish, falsely
3 indicated that trading was still going on.

4 According to the evidence the government would
5 present, the effect of these false statements was to induce
6 investors to invest in excess of 450 million dollars in the
7 Bayou funds during the relevant time period.

8 Q. All right. Mr. Marino, did you hear what the assistant
9 United States attorney just said?

10 A. Yes.

11 Q. Do you agree with that?

12 A. Yes.

13 Q. Have you clearly and fully understood everything that has
14 happened here today so far?

15 A. Yes.

16 Q. Do you have any questions of your attorney or the Court
17 before I continue?

18 A. I have none. I'm not sure about Mr. Bowman.

19 MR. BOWMAN: I'm ready to proceed, your Honor.

20 Q. I'm going to summarize the felony information and take your
21 plea. Count 1. The United States Attorney charges, and I'm
22 going to start -- if you want to remain seated, Mr. Bowman --

23 A. It would be easier for me, if it's not too much of a
24 imposition.

25 Q. No. Under the circumstances you can remain seated.

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1 A. Thank you.

2 Q. On page 2, paragraph 4. During the relevant time period,
3 Bayou sustained trading losses. In order to induce investors
4 to invest in Bayou and to lull existing investors into
5 retaining their investment in Bayou, the defendant perpetrated
6 a scheme to defraud investors by disseminating reports and
7 financial statements, among other things, that contained
8 materially false statements, and by failing to invest the
9 investor's funds as promised.

10 Among the means and methods by which Marino and
11 co-conspirators not named herein would and did carry out the
12 conspiracy were the following:

13 A. Marino and a co-conspirator reported fictitious
14 rates of return of the Bayou Hedge Funds and quarterly reports
15 and had those reports mailed to investors.

16 B. Marino and a co-conspirator reported fictitious
17 rates of return of the Bayou Hedge Funds in weekly newsletters
18 and had those newsletters emailed or faxed to investors.

19 C. Marino and a co-conspirator reported individual
20 investor's inflated accumulated profits in monthly reports and
21 had those reports mailed to investors.

22 D. Marino and his co-conspirators had annual
23 financial statements mailed to investors that contained among
24 other misrepresentations inflated rates of return on trading,
25 inflated net asset value, and certifications that Bayou had

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1 been audited by a certified public accounting firm known as
2 Richmond Fairfield Associates.

3 E. In or about early 1999, Marino created the phony
4 accounting firm, Richmond Fairfield Associates, and it
5 conducted no audits.

6 F. Between in or about the fall of 2003 and in or
7 about August 2005, Marino and a co-conspirator entered and
8 attempted to enter into private financial transactions using
9 money from the Bayou Hedge Funds without disclosing the nature
10 of those transactions to its investors.

11 G. From in or about July 1996 through August 2005,
12 Marino and his co-conspirators induced investors to contribute
13 in excess of \$450,000,000 to the Bayou Hedge Funds.

14 From in or about July 1996 to in or about August 2005
15 in the Southern District of New York and elsewhere, Daniel
16 Marino, the defendant, and co-conspirators not named herein,
17 unlawfully, willfully and knowingly did combine, conspire,
18 confederate and agree together and with each other to commit
19 offenses against the United States.

20 To wit: A. Investment adviser fraud in violation of
21 Title 15 United States Code Sections 80b-6 and 80b-17.

22 B. Mail fraud in violation of Title 18 United States
23 Code Section 1341.

24 And C. Wire fraud, in violation of Title 18, United
25 States Code Section 1343.

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1 It was part and object of the conspiracy that Daniel
2 Marino, the defendant, and co-conspirators not named herein,
3 acting as investment advisers with respect to one or more
4 clients and prospective clients in the Bayou Hedge Funds
5 unlawfully, willfully and knowingly, by the use of the mails
6 and the means and instrumentalities of interstate commerce
7 directly and indirectly did:

8 A. Employ devices, schemes and artifices to defraud
9 clients and prospective clients;

10 B. Engage in transactions, practices and courses of
11 business which operated as a fraud and deceit upon clients and
12 prospective clients;

13 and C, engaged in acts, practices and courses of
14 business that were fraudulent, deceptive and manipulative in
15 violation of Title 15 United States Code Sections 80b-6 and
16 80b-17.

17 It was further a part and object of the conspiracy
18 that Daniel Marino, the defendant, and co-conspirators not
19 named herein, unlawfully, willfully and knowingly, having
20 devised and intending to devise a scheme and artifice to
21 defraud, and through obtaining money and property by means of
22 false and fraudulent pretenses, representations and promises,
23 did place and cause to be placed in a post office and
24 authorized depository for mail matter, matters and things to be
25 sent and delivered by the Postal Service and private and

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1 commercial interstate carriers, and did take and receive
2 therefrom such matters and things in violation of Title 18
3 United States Code Section 1341.

4 It was part and object of the conspiracy that Daniel
5 Marino, the defendant, and co-conspirators not named herein,
6 unlawfully, willfully and knowingly, having devised and
7 intending to devise a scheme and artifice to defraud and
8 through obtaining money and property by means of false and
9 fraudulent pretenses, representations and promises, would and
10 did transmit and cause to be transmitted by means of wire and
11 radio communication in interstate and foreign commerce,
12 writings, signs, signals, pictures and sounds for the purpose
13 of executing such scheme and artifice in violation of Title 18
14 United States Code Section 1343.

15 In furtherance of said conspiracy and to effect the
16 illegal object thereof, the following overt acts among others
17 were committed in the Southern District of New York and
18 elsewhere. And I'm going to read the first and last of the
19 overt acts:

20 A. At various times from in or about July 1996
21 through in or about August 2005, a co-conspirator not named
22 herein traded securities on behalf of Bayou through computers
23 located in Westchester County, New York and at Bayou's offices
24 in Stamford, Connecticut.

25 And I. At various times, between in or about May 2003

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1 and in or about August 2005, Marino invested money contributed
2 to the Bayou Hedge Funds in private placements transactions,
3 all in violation of Title 18 United States Code Section 371.

4 To Count 1, how do you plead, guilty or not guilty?

5 A. Guilty.

6 Q. Count 2, the United States Attorney further charges from in
7 or about July 1996 to in or about August 2005 in the Southern
8 District of New York and elsewhere, Daniel Marino, the
9 defendant, and co-conspirators not named herein, acting as
10 investment advisers with respect to clients and prospective
11 clients in the Bayou Hedge Funds, unlawfully, willfully and
12 knowingly, by the use of the mails and the means and
13 instrumentalities of interstate commerce, directly and
14 indirectly did:

15 A. Employ devices, schemes and artifices to defraud
16 clients and prospective clients;

17 B. Engage in transactions, practices and courses of
18 business which operated as a fraud and deceit upon clients and
19 prospective clients;

20 and C, engage in acts, practices and courses of
21 business that were fraudulent, deceptive and manipulative in
22 violation of Title 15 United States Code Sections 80b-6, 80b-17
23 and Title 18 United States Code Section 2.

24 To Count 2, how do you plead, guilty or not guilty?

25 A. Guilty.

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1 Q. Count 3, the United States Attorney further charges from in
2 or about July 1996 through in or about August 2005 in the
3 Southern District of New York and elsewhere, Daniel Marino, the
4 defendant, and co-conspirators not named herein, having devised
5 and intending to devise a scheme or artifice to defraud, and to
6 obtain money and property by means of false and fraudulent
7 pretenses, representations and promises, namely the scheme that
8 has been set forth in this information, for the purpose of
9 executing such scheme and artifice and attempting to do so, did
10 place and cause to be placed in a post office and authorized
11 depository for mail matter, matters and things to be sent and
12 delivered by the Postal Service and private and commercial
13 interstate carriers, and did take and receive therefrom such
14 matters and things, namely quarterly reports, monthly reports,
15 and annual financial statements in violation of Title 18,
16 United States Code Sections 1341 and 2.

17 To Count 3, how do you plead, guilty or not guilty?

18 A. Guilty.

19 Q. Count 4. The United States Attorney further charges from
20 in or about July 1996 through in or about August 2005 in the
21 Southern District of New York and elsewhere, Daniel Marino, the
22 defendant, and co-conspirators not named herein, having devised
23 and intending to devise a scheme and artifice to defraud and to
24 obtain money and property by means of false and fraudulent
25 pretenses, representations and promises, namely the scheme set

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1 forth above, would and did transmit and cause to be transmitted
2 by means of wire and radio communication in interstate and
3 foreign commerce writings, signs, signals, pictures and sounds
4 for the purpose of executing such scheme and artifice, namely
5 weekly newsletters, in violation of Title 18 United States Code
6 Sections 1343 and 2.

7 To Count 4, how to you plead, guilty or not guilty?

8 A. Guilty.

9 Q. And there are some forfeiture allegations that are alleged.
10 It is alleged that the defendant, Daniel Marino, is forfeiting
11 all property traceable to:

12 A. Approximately \$100,010,673.68 on deposit at Bank
13 of America in the name of the Arizona State Treasurer.

14 B. All that lot or parcel of land together with its
15 buildings, appurtenances, improvements, fixtures, attachments
16 and easements located at 261 Bayberry Lane in Westport,
17 Connecticut.

18 C. All rights, title and interest of the defendant in
19 any entities or partnerships including but not limited to IM
20 Partners and IMG, LLC. And any and all assets including bank
21 accounts held for the benefit of such entities or partnerships.

22 D. Any and all interest in any bank accounts and/or
23 brokerage accounts held in and for the benefit of the
24 defendant. And there are some substitute asset provisions.

25 Mr. Marino, you acknowledge and agree to that

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1 forfeiture?

2 A. Yes.

3 Q. Has anyone made any promises to you other than what has
4 been set forth in the plea agreement in order to induce you to
5 plead guilty?

6 A. No.

7 Q. Has anyone threatened you or coerced you to get you to
8 plead guilty?

9 A. No.

10 Q. Has anyone put any pressure on you or done anything
11 improper to you to get you to plea guilty?

12 A. No.

13 Q. Has anyone made any specific promises to you about what
14 your sentence will be in this matter?

15 A. No.

16 Q. Mr. Marino, in your own words, you are now going to have to
17 tell me what you did in connection with these charges that
18 you're pleading guilty to.

19 A. Thank you for letting me sit down. As set forth in the
20 information, I did participate as chief financial officer of
21 Bayou in a conspiracy and a course of conduct along with other
22 individuals to mislead investors in the Bayou Hedge Fund by
23 sending them false information regarding the true status of
24 their investment. The communication to investors was sent by
25 mail and by wire, intended to mislead investors. I did not act

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1 alone when I committed these offenses. At the end of 1998, we
2 all agreed to set up an accounting firm that would give the
3 appearance of an independent auditor to further the conspiracy
4 to deceive Bayou investors. I did form Richmond Fairfield
5 Associates which certified a false financial statement of Bayou
6 as true. The other individuals with whom I conspired and acted
7 in concert with included an individual who was the chief
8 investment officer throughout the entire period responsible for
9 actual trading of securities for Bayou investors, the other
10 individual was responsible for which security to trade on
11 behalf of the Bayou investors. I also provided certain
12 documentation to a lending institution which I knew to be false
13 when I did so.

14 I deeply regret my action and I am very sorry in more
15 words than I can say in every respect. And I one hundred
16 percent accept my responsibility for these actions.

17 Q. Did you do the acts that you just talked about, that were
18 mentioned here, did you do those acts knowingly and willfully,
19 you knew what you were doing?

20 A. Yes.

21 Q. Are you pleading guilty to these charges because you are in
22 fact guilty of the crimes charged?

23 A. Yes.

24 Q. Did anyone force you or coerce you or threaten you to do
25 those acts?

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1 A. No.

2 THE COURT: Are counsel satisfied with the state of
3 the record?

4 MS FEINZIG: Yes, your Honor.

5 MR. BOWMAN: Yes, your Honor.

6 THE COURT: All right. Mr. Bowman, do to you know of
7 any reason why the Court should not accept the plea of guilty?

8 MR. BOWMAN: I do not, your Honor.

9 BY THE COURT:

10 Q. Mr. Marino, have you clearly and fully understood
11 everything that has happened here today?

12 A. Yes.

13 THE COURT: On this allocution, the Court finds that
14 the defendant is fully competent and capable of entering an
15 informed plea of guilty. The pleas are knowing and
16 voluntarily. The pleas are supported by an independent factual
17 basis for each and every element of the crimes charged.
18 Accordingly, I report and recommend to Judge McMahon that the
19 pleas be accepted and that the defendant be adjudged guilty of
20 the crimes charged. I'm going to direct that a presentence
21 investigation be conducted by the United States Probation
22 Office. I further direct the court reporter to provide a
23 transcript of these proceedings which sets forth my report and
24 recommendation to Judge McMahon within 30 days. The matter
25 will be adjourned for sentencing until January 9, 2006 at

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1 nine a.m.

2 This is the defendant's first appearance in court?

3 MS FEINZIG: It is, your Honor.

4 THE COURT: Okay. We need to set bail.

5 MS FEINZIG: Yes, your Honor. I've spoken with
6 Mr. Bowman and we would recommend to the Court that Mr. Marino
7 be released on a \$500,000 personal recognizance bond to be
8 co-signed by three financially responsible people; that he be
9 restricted to not traveling beyond the District of Connecticut
10 and the Southern and Eastern Districts of New York until travel
11 is preapproved by the United States Attorney's Office; that he
12 surrender his passport, which he already has; and that he abide
13 by the other standard conditions of release. The government
14 would consent to his having two weeks to have his three
15 financially people sign the bond.

16 THE COURT: Mr. Bowman, any problem?

17 MR. BOWMAN: I have no objection to those terms, your
18 Honor. If we do have an issue with respect to co-signers on
19 the bond, should we come back to your Honor?

20 THE COURT: Yes. Discuss it with the United States
21 Attorney first and if there's an issue, you both can come down
22 and see me.

23 MR. BOWMAN: Thank your Honor.

24 THE COURT: All right. I have reviewed the report. I
25 am going to accept the recommendation. Bail will be set in the

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1 amount of a five hundred thousand dollar personal recognizance
2 bond to be co-signed by three financially responsible persons.
3 The three financially responsible persons will have two weeks
4 from today to be approved by the United States Attorney. I am
5 going to restrict the travel of the defendant to the Southern
6 District of New York, Eastern District of New York and the
7 District of Connecticut. Anything beyond that will have to be
8 approved by the United States Attorney and the Court.

9 Do you have a passport?

10 THE DEFENDANT: Yes.

11 MR. BOWMAN: He surrendered it this morning.

12 MS FEINZIG: Yes.

13 THE COURT: I direct that you not make application for
14 any other passport or travel documents while you are released.
15 I am going to direct that you be subject to pretrial
16 supervision to include continued mental health counseling under
17 the guidance of the Pretrial Services Office. What that means,
18 Mr. Marino, is that if the Pretrial Service officer tells you
19 to do something, it's just like the Court telling you to do
20 something and you have to do it. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: The following conditions are also imposed.
23 You shall not commit any offense in violation of federal, state
24 or local law while on release. You shall immediately advise
25 the Court, defense counsel, and the United States Attorney in

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1 writing prior to any change of address or telephone number.

2 You shall appear at all proceedings as required. You shall

3 refrain from possessing a firearm, destructive device or other

4 dangerous weapon. You shall refrain from excessive use of

5 alcohol. You shall refrain from any use or unlawful possession

6 of a narcotic drug or other controlled substance unless

7 prescribed by a medical practitioner. If you violate any

8 conditions of release, you could be brought back into court and

9 your bail could be revoked, do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: If you do not show up in court as

12 required, you could face a separate charge of bail-jumping and

13 face additional fines, imprisonment, or both, do you understand

14 that?

15 THE COURT: Anything further?

16 MS FEINZIG: Nothing from the government.

17 MR. BOWMAN: No.

18 THE COURT: Once the necessary papers are signed, the

19 defendant can be released. I am going to direct that you take

20 your client down to the Probation Office after you sign the

21 papers to start the presentence investigation process.

22 THE CLERK: All rise, this Court will be in recess.

23 (Proceedings adjourned)

24

25